

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

MAR 2 5 2003

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

NEWTEK, INC.,

Plaintiff,

vs.

LUXOLOGY, LLC, and
BRAD PEEBLER,

Defendants.

CIVIL ACTION NO. SA-02-CA-1078-FB

ORDER TO SHOW CAUSE

The Court considered the status of the above-styled and numbered cause. This cause of action was commenced by the filing of Plaintiff's Original Complaint on November 8, 2002. As of this date, defendants named by plaintiff in this case have failed to answer. The reason for this failure appears to be plaintiff's failure to obtain service of the summons and a copy of the complaint upon these defendants. Federal Rule of Civil Procedure 4(c)(1) provides in relevant part: "The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint." FED. R. CIV. P. 4(c)(1) (emphasis added). Subdivision m provides in pertinent part:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

FED. R. CIV. P. 4(m). More than 120 days have elapsed since the filing of plaintiff's complaint and there is no indication plaintiff has served defendants.

2.

IT IS THEREFORE ORDERED that plaintiff shall show good cause, **on or before April 8, 2003**, why its claims against defendants should not be dismissed pursuant to Rule 4(m). Id. Plaintiff is notified the failure to timely and properly respond to this Order shall result in the dismissal of its claims.

It is so ORDERED.

SIGNED this 25th day of March, 2003.



FRED BIERY
UNITED STATES DISTRICT JUDGE